IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.296 of 2000
With
Cr.Appeal Nos.367, 368 & 369 of 2000.

Reserved on:September 20, 2007

Decided on:September 24, 2007.

Please, see over-leaf:

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: }
} **Please, see over-leaf.**
For the respondents: }

Kuldip Singh, Judge

This judgment shall dispose of Criminal appeal Nos.296, 367, 368 and 369 of 2000, which have arisen from common judgment dated 19.1.2000 passed by learned Sessions Judge, Solan in Criminal Appeal Nos.15-S/10 of 1999, 16-S/10 of 1999, 17-S/10 of 1999 and 18-S/10 of 1999 respectively.

2. The facts, in brief, are that five persons, namely, Sukh Ram alias Sukh Pal, Mangal Dev, Gita Ram, Babu Ram and Anoop kumar were prosecuted. Anoop Kumar was charged under Sections 379, 420, 468 I.P.C. and Sections 41, 42 of the Indian Forest Act, Mangal Dev, Sukh Ram, Babu Ram and Gita Ram were charged under Sections 41, 42 of Indian Forest Act. The prosecution case is

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Whether the reporters of the local papers maybe allowed to see the judgment?Yes

that on 16.11.1990 at about 10.45 a.m. A.S.I. Gurdyal Singh, Incharge, Traffic Barrier, Parwanoo along with H.C. Balak Ram, Constable Hans Raj, Constable Prem Dass and Constable Prabhat Chand were checking vehicles in routine manner at Parwanoo Barrier. Truck No.HP-14-0540 came there and was stopped, four persons were sitting in the cabin and three persons were sitting in the back portion of the truck which was loaded with gunny bags. The truck was checked and it was found that under gunny bags of apples there were 46 sleepers of *Devdar.* None of the occupants of the truck including the driver could show the permit for carrying timber. One person, who was sitting in the cabin of the truck, ran away towards Kalka, later on his name was disclosed as Anoop Kumar. Mangal Dev, Raj Kumar and Shobha Ram were sitting in the back portion of the truck. A.S.I. called from Forest Check Post, Parwanoo, Sunder Lal, Deputy Ranger, Ramesh Chand, Guard, Jagdish Chand, Lekh Ram, Timber Watcher. On the basis of this information, *Ruka* was sent to Police Station, Parwanoo for registration of the case under Sections 41, 42 of the Indian Forest Act and consequently F.I.R. was registered, 46 sleepers of *Devdar* were taken into possession.

3. It was revealed during investigation that Anoop Kumar prepared fictitious G.R. in the name of *Kisan Bhai Goods Carrier*, specimen handwriting and signatures of Anoop Kumar were taken. During investigation it was found that 46 sleepers were stolen which were owned by Partap Singh and these were being illegally transported to Haryana and Punjab. It was also revealed during

investigation that spare parts of vehicle No.HIS-6070 owned by Shobha Ram were also being carried in the truck, Shobha Ram and Raj Kumar had no connection with the commission of offence and no challan was filed against them.

4. The prosecution examined 22 witnesses. The statements under Section 313 Cr.P.C. were recorded. The learned Judicial Magistrate 1st Class, Solan on 19.5.1999 convicted Sukh Ram, Mangal Dev, Babu Ram, Anoop Kumar and Gita Ram under Sections 41, 42 of the Indian Forest Act and Anoop Kumar was also convicted under Section 468 I.P.C., each accused was sentenced under Sections 41, 42 of the Indian Forest Act for simple imprisonment of three months with fine of Rs.500/-. Anoop Kumar was additionally sentenced simple imprisonment of three months and fine of Rs.500/- under Section 468 I.P.C. In default of payment of fine further simple imprisonment of 15 days was awarded. All convicts filed separate appeals, except Sukh Ram and Gita Ram who filed joint appeal being Criminal Appeal No.16-S/10 of 1999. The learned Sessions Judge decided all appeals by common judgment dated 19.1.2000 and accepted the appeals, hence the State has filed the present appeals.

5. I have heard the learned Additional Advocate General for the State and learned counsel for the respondents and gone through the record.

6. The prosecution case is that offence was allegedly committed on 16.11.1990 but cognizance was taken by learned trial

Judge on 15.7.1992. The accused were acquitted under Section 379 I.P.C. but were convicted under Sections 41, 42 of the Indian Forest Act and Anoop Kumar was also convicted under Section 468 I.P.C. The allegations against Anoop Kumar are that he forged G.R. Ext.PW-18/A. In support of forgery allegedly committed by Anoop Kumar, the prosecution has relied handwriting expert report Ext.PW-19/A. This report was produced by PW-19 Garib Dass, Retired Inspector. The prosecution did not examine handwriting expert to prove Ext.PW-19/A. Section 293 Cr.P.C. permits use of some reports in evidence but report of handwriting expert is not included in Section 293 Cr.P.C. In other words, handwriting expert opinion is required to be proved in accordance with law. In the present case, handwriting expert report has not been proved as per law, therefore, handwriting expert report Ext.PW-19/A cannot be read in evidence. In absence of handwriting expert report there is nothing on record to show that Anoop Kumar has forged Ext.PW-18/A. The learned Sessions Judge has rightly acquitted Anoop Kumar under Section 468 I.P.C.

7. As noticed above, the offence was allegedly committed on 16.11.1990 and learned trial Judge took cognizance on 15.7.1992 after about one year and eight months. The offence under Sections 41, 42 of the Indian Forest Act is punishable for six months which may double when the offence is committed after sun set or before sun rise. In the present case, the offence was committed at about 10.45 a.m. As per Section 468 Cr.P.C. one year limitation is provided for taking cognizance of offence where offence is punishable with

imprisonment not exceeding one year. There is no order under Section 473 Cr.P.C. for taking cognizance of offence after the expiry of period of limitation. The Apex Court in ***State of Punjab*** Versus ***Sarwan Singh [AIR 1981 SC 1054]*** has held that the object of Section 468 Cr.P.C. is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. Any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation. In that case, the accused was charged under Section 408 I.P.C. The trial Court acquitted the accused of the charge under Section 408 but convicted him under Section 406. The accused filed an appeal to the High Court which was allowed and the accused was acquitted mainly on the ground that prosecution launched against the respondent was barred by limitation under Sections 468, 469 Cr.P.C. The view taken by the High Court was upheld by the Apex Court. In ***Tara Dutt & another*** *Versus* ***State of Himachal Pradesh [1998(1) Shim.L.C. 365],*** the period of limitation for taking cognizance of the offence under Sections 417, 465 I.P.C. had expired on the date learned Sessions Judge took cognizance of the major offences for which there was no period of limitation. The learned Sessions Judge convicted the two accused for lesser offences punishable under Sections 417, 465 I.P.C. without recourse to Section 473 Cr.P.C. In these circumstances, this Court held that conviction of two accused in that case under Sections 417, 465 I.P.C. could not have been ordered since the chargesheet for such offence

had become barred by time. In the present case also, the trial of accused under Sections 41, 42 of the Indian Forest Act had become barred by time on the date trial Court took cognizance. No case has been made out for interference, consequently, all appeals being Cr.Appeals No.296 of 2000, 367 of 2000, 368 of 2000 and 369 of 2000 are dismissed. Bail bonds furnished by the respondents are discharged.

September 24, 2007. ***(Kuldip Singh), J.***

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1. ***Criminal Appeal No.296 of 2000***:

State of Himachal Pradesh …Appellant.

Versus

Anoop Kumar …Respondent.

For the appellant: Mr.M.L.Chauhan, Addl. A.G.

For the respondent: Mr.Vinay Thakur, Advocate.

2. ***Criminal Appeal No.367 of 2000***:

State of Himachal Pradesh …Appellant.

Versus

Mangal Dev …Respondent.

3. ***Criminal Appeal No.368 of 2000***:

State of Himachal Pradesh …Appellant.

Versus

Babu Ram …Respondent.

For the appellant: Mr.M.L.Chauhan, Addl.A.G.

For the respondents: Mr.M.L.Sharma, Advocate.

4. ***Criminal Appeal No.369 of 2000***:

State of Himachal Pradesh …Appellant.

Versus

Sukh Ram & Anr. …Respondents.

For the appellant: Mr.M.L.Chauhan, Addl.A.G.

For respondent No.2: Mr.Navlesh Verma, Advocate.

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